IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of case

Writ Petition No. 1062 of 2003 (S/S)

Decided on: 11 Oct., 2007

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 11.10.2007

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1062 of 2003 (S/S)

Suresh Pal Singh
S/o Shri Shankar Singh
R/o P-III, Yamuna Colony,
Kalandi Enclave, Village –Kanwali,
Tehsil and District Dehradun.

..... Petitioner

Versus

1. State of Uttaranchal
   through Secretary,
   Irrigation Department, Dehradun.
2. Executive Engineer (Karmik)
   For Chief Engineer and Heard of Department,
   Karmik Anubhag, Sinchai Vibhag,
   Uttaranchal, Dehradun.
3. Chief Engineer, Ganga Ghati,
   Irrigation Department, Yamuna Colony,
   Dehradun (Uttaranchal).

..... Respondents

Mr. Lok Pal Singh and Mr. Rakesh Thapliyal, Advocates for the petitioner.
Mr. N.P. Sah and Mr. H.M. Raturi, Standing Counsel for respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petitions, moved under Article 226 of the Constitution of India, the petitioner initially challenged the order dated 31.07.2003, whereby the petitioner was placed under suspension. Meanwhile,

during the pendency of the writ petition, an order dated 20.08.2004 is passed by respondent No. 3, whereby the petitioner is dismissed from service. As such, by way of amendment said order is also challenged, in this writ petition.

2) Heard learned counsel for the parties and perused the counter affidavit, rejoinder affidavit, supplementary counter affidavits, supplementary rejoinder affidavit filed by the parties.

3) Brief facts of the case, as narrated in the writ petition, are that petitioner was a Junior Engineer (Civil)) with Irrigation Department of the State. He was transferred vide order dated 17.07.2003, from Division II of Tunnel and Power House Dehradun to Colony and Communication Division, Dakpathar, Dehradun. He was relieved from the place transferred on 28.07.2003. He was placed under suspension vide order dated 31.07.2003, on the ground that he threatened to go on hunger strike and violated the U.P. Government Servants Conduct Rules, 1956. Disciplinary proceedings were proposed against him and he was attached with Irrigation Construction Division at Almora. Petitioner's case is that he joined his duties at Colony and Communication Division, Dakpathar, Dehradun on 01.08.2003. It is alleged by the petitioner that the disciplinary proceedings drawn against him are malafide. By way of amendment in the grounds of the writ petition, it is alleged that the petitioner made complaints against his superior officers, which caused annoyance against him. It is further stated that neither the enquiry was conducted as

per the rules, nor any opportunity of being heard is given to the petitioner. It is also alleged that the impugned order of dismissal from service is violative of Clause (1) of Article 311 of the Constitution of India. Denying that the petitioner ever made any fake entries in the official record, it is alleged that the first information report lodged against him, is false and motivated. It is also alleged by the petitioner that he never refused to receive the correspondence made to him by the respondents and the charge in this regard is also false. It is further alleged that the Irrigation Minister, Chief Engineer and Engineer-In-Chief of the Irrigation Department also gave interviews on Television regarding some enquiry, but it is only the petitioner, who is penalized for giving interview to a T.V. channel. As to the charge of misappropriation of Rs. 1,000/-, it is alleged that the petitioner deposited the amount at the earliest, after his transfer order.

4) In the counter affidavit filed on behalf of respondents it is stated that Sri Harivilas Chandra Pathak, Superintending Engineer, Irrigation Construction Circle, Almora, was appointed Enquiry Officer for conducting enquiry against the petitioner, but the petitioner had concealed said fact. It is further stated in the counter affidavit that not only the petitioner was indulged in various financial irregularities, but also many criminal cases are pending against him. As to the transfer order dated 17.07.2003, it is stated in the counter affidavit that the petitioner committed disobedience of the transfer order and resorted to hunger strike and threatened using political pressure. Defending the suspension order it is pleaded that

on 28.07.2003, when the petitioner was relieved from Division II of Tunnel and Power House, Dehradun, he did not handover the charge to the Junior Engineer concerned. It is also stated in the counter affidavit that he retained the measurement book and fabricated entries at page Nos. 1, 2, 11 and 12 of Book No. 54. A first information report was lodged against the petitioner relating to offences punishable under Section 467, 468 and 471 of I.P.C., which was registered as Crime No. 18 of 2003 at the concerned police station.

5) In supplementary counter affidavit filed on behalf of the respondents on 09.08.2004, it is stated that during the pendency of the writ petition, enquiry against the petitioner has been completed and impugned order dated 20.08.2004 has been passed dismissing the petitioner from service. It is further stated in this counter affidavit that when in compliance of the interim order dated 17.09.2003, the order of suspension is revoked during the pendency of this writ petition, and the petitioner was asked to join his duties at Irrigation Construction Division, Almora, where he was attached during the pendency of enquiry, he did not join his duties there. He refused to receive any correspondence including the correspondence sent to him by registered post. Since, he failed to join his duties, as such, he is not entitled to any salary for the period he has not joined his duties.

6) In the rejoinder affidavit filed on behalf of the petitioner the contents of the writ petition are reiterated, and it is stated that the petitioner was not bound to join

duties at Almora, after the order of suspension was stayed by this Court.

7) Respondent No. 2 filed two supplementary counter affidavits, one on 17.09.2004 and another on 15.10.2004. In the supplementary counter affidavit filed on 17.09.2004, it is stated by respondent No. 2 that the averments made in the rejoinder affidavit are wrong and there is criminal record of the petitioner with the police, a copy of which is filed as C.A. – 9 to the counter affidavit. It is further stated in this supplementary counter affidavit that when the petitioner refused to receive all kind of communication, the notice to file his reply in the departmental enquiry was published in daily newspaper. It is further alleged that the petitioner failed to maintain the integrity required by the Government servant. In the supplementary counter affidavit filed on 17.09.2004, it is stated that the respondents were well within their jurisdiction to post the petitioner at Almora.

8) A third supplementary counter affidavit has been filed on behalf of respondent No. 2 on 15.10.2004 to reply the contents of the amendment made in the writ petition challenging the order of dismissal passed during the pendency of the writ petition. In this supplementary counter affidavit it is stated that the respondents were not prejudicial to the petitioner. Defending the order dismissing the petitioner from service, it is stated that the post earlier known as Engineer-In-Chief is now designated as Chief Engineer, as such, there is no violation of Clause (1) of Article 311 of the Constitution of India. It is further

stated in this supplementary counter affidavit that the petitioner is habitual in making baseless complaints against the superior officers and he does so only for blackmailing them. In Para 16 of the supplementary counter affidavit it is stated that charge sheet was framed against the petitioner in the enquiry, but he did not receive the same, nor did he co-operate in the enquiry.

9) To bring on record further development, during the pendency of the writ petition, respondent No. 2 has filed yet another supplementary counter affidavit on 27.04.2005, wherein it has been stated that when the petitioner made a complaint to Lokayukta, Uttarakhand, that he has not been paid subsistence allowance for the period of suspension, directions were issued by Lokayukta to the authorities concerned to decide the representation of the petitioner, in the matter. It is further stated in this supplementary counter affidavit that the representation of the petitioner was decided by Secretary, Irrigation, vide order dated 16.04.2005, ordering that subsistence allowance be paid to him (petitioner) for a period of 01.08.2003 to 22.09.2003. Since, thereafter, he did not report himself on duty till his dismissal, as such, nothing was directed to be paid to him, thereafter.

10) In supplementary rejoinder affidavit filed by the petitioner on 20.11.2004, it is stated that the complaints were made by the petitioner against his officers, namely Sri Sagar Chand, Km. Manju, Sri M.C. Gupta, Sri K.N. Virmani, Sri Nasir Ali Khan, Sri Guna Nand Sharma and Sri Chandra Beer Singh. It is denied that the respondents

were not prejudiced against the petitioner. It is further stated in this supplementary rejoinder affidavit that the petitioner informed the respondents that he cannot participate in the departmental enquiry at Almora, and as such, it cannot be said that opportunity of hearing given to him is just and proper.

11) Before further discussions, it is pertinent to mention here, the chart showing criminal history of the petitioner, which is annexed with Annexure C.A. – 9 to the counter affidavit filed by the respondents:

Sl. No.	Police Station	Crime No.	Sections	Date	When arrested	Released on bail	Result of investigation	Status of the case
1	Thana Kotwali	93 of 1996	420, 467, 468, 447, 511 IPC	24/1/96	31/1/99	1/2/99	Pending	-
2	Thana Kotwali	147 of 2000	420, 463, 464, IPC	25/2/ 2000	-	-	Charge sheet filed on 29/2/01	Pending
3	Thana Kotwali	500 of 2000	420, 467, 468, 471, 502, 506 IPC	13/5/ 2000	Stayed	-	Charge sheet filed on 4.9.2000	Acquitted
4	Thana Kotwali	720 of 2002	420, 467, 468, 469, 471, 506 IPC	2/11/2000	Stayed	-	Charge sheet filed on 28/5/2000	Pending
5	Vasant Vihar	02 of 2003	420, 406 IPC	14/6/2003	-	-	Pending	-
6	Cantt.	08 of 1995	342, 332, 353, 323, 504, 506 IPC	18/1/95	20/1/95	-	Charge sheet filed on 4/2/95	Compromised on 1/2/96
7	Cantt.	83 of 2000	323, 504, 506 IPC	25/4/2000	27/4/2000	-	Charge sheet filed on 12/5/2000	Pending

All the cases shown in above chart appear to be prior to the transfer order dated 17.07.2003, whereby the petitioner is transferred from Division II of Tunnel and Power House, Dehradun to Colony and Communication Division, Dakpathar, Dehradun. The only first information report lodged after said transfer order (a copy of which is Annexure C.A. – 10 to the counter affidavit) is lodged against the petitioner on 21.09.2003 registered as Crime No. 18 of 2003, in respect of offences punishable under Section 467, 468 and 471 of I.P.C., relating to alleged manipulation and making fake entries in the measurement book made by the petitioner, which is also one of the charges stated to have been proved by the respondents against the petitioner in the departmental enquiry. Annexure C.A. – 11 is copy of judgment and order dated 08.03.1995, passed by Additional Chief Judicial Magistrate III, Dehradun, in Criminal Case No. 327 of 1994; Sushila Sharma Vs. S.P. Singh (present petitioner), which shows that the petitioner was convicted by the Magistrate under Section 138 of the Negotiable Instruments Act, and sentenced to fine of Rs. 1,00,000/-. Learned counsel for the petitioner submitted that the petitioner filed an Appeal against said order and the Appeal was allowed, and the petitioner was acquitted of the charge.

14) It is vehemently argued by learned counsel for the petitioner that no opportunity of being heard is given to the petitioner. In this connection, it is further contended that no charge sheet was served on the petitioner. In reply to this, learned Standing Counsel for the State submitted that the charge sheet was framed against the petitioner, but he

refused to accept the same. Ultimately, a notice was got published in the daily newspaper, a copy of said notice is annexed as Annexure S.C.A. – 1 to the supplementary counter affidavit filed on 17.09.2004. The perusal of this notice shows that before publication of the notice, the enquiry officer sent several letters to the petitioner, who got them returned. It is also mentioned in the notice published in the newspaper that on 22.06.2004 by registered post charge sheet was sent to the petitioner, which the petitioner got returned on 05.07.2004. Finally, by the publication of the notice, petitioner was invited to submit his explanation to the charges, within seven days of the publication.

15) In view of the conduct of the petitioner shown by the respondents, as discussed above, this Court is unable to accept the submission of learned counsel for the petitioner that no opportunity of being heard was given to the petitioner. The petitioner himself in Para 10 of his rejoinder affidavit has stated that when the notice (asking him to submit reply before enquiry officer) was published in the newspaper, he submitted an application that he would not participate in the departmental enquiry at Almora. In these circumstances, the cry now made by the petitioner that he was not given opportunity of being heard, is unacceptable.

16) It is also pertinent to mention here the reasons given by respondent No. 3 Chief Engineer, Ganga Ghati, Dehradun in the impugned order dated 20th August 2004 (a copy of which is Annexure – 7 to the supplementary counter affidavit filed by respondent No. 2 on 17.09.2004) whereby

the petitioner is dismissed from the service. The said order runs into four pages. Out of the charges mentioned in the impugned order, charge No. 3 relates to making fake entries in the page Nos. 1, 2, 11 and 12 of the measurement book No. 54, by the petitioner before handing over the same on his transfer from Division II of the Tunnel and Power House, Dehradun, is a serious charge and based on the record. The other charges which are also discussed in the impugned order show that on 28.11.2003, the petitioner gave an interview to 'Sahara Samay' news channel on 28.04.2003, without taking permission of the higher authorities and alleged unfounded scandals in construction of banglows of Ministers. This conduct was found in violation of the Conduct Rules applicable to the petitioner. Yet another charge pertains to resorting to hunger strike by the petitioner instead of obeying the transfer order passed transferring him, which again was a conduct showing no devotion to his duties on the part of the petitioner. One of the several charges mentioned in the impugned order pertains to the fact that after being placed under suspension on 31.07.2003, the petitioner showing an act of indiscipline got sent joining report at the transferred place on 01.08.2003. Regarding non-refund of advance of Rs. 1,000/- received by the petitioner, it was found that he committed temporary embezzlement of the same and it was only on 30th October 2003 (after the petitioner was placed under suspension) he made the refund.

17) Having heard learned counsel for the parties and after going through the entire evidence on record, in the above

facts and circumstances , considering the conduct of the petitioner, this Court is not inclined to interfere with the order of dismissal passed against hte petitioner, in exercise of powers under Article 226 of the Constitution of India, which are discretionary in nature.

18) Therefore, this writ petition is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt. October 11, 2007.
H.Negi